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P.O. BOX 10395  
CHICAGO, IL 60610

**COPY MAILED**

**FEB 06 2006**

In re Application of  
Maddox  
Application No. 09/578,810  
Filed: May 24, 2000  
Attorney Docket No. 10970-009

**OFFICE OF PETITIONS**  
**ON PETITION**

This is a decision on the petition filed March 12, 2003, 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.<sup>1</sup>

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition To Withdraw the Holding of Abandonment." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Facts:

On May 7, 2001, the law firm of Harness, Dickey & Pierce, PC ("Harness") transferred 41 boxes of files and materials to the law firm of Brinks, Hofer, Gilson & Lione ("Brinks"). The instant application was one of the files transferred to Brinks.

The May 7, 2001 letter to Brinks stated,

It is our understanding that you are assuming responsibility for all further action ... and will attend to the filing of a new power of attorney and change of address with the United States Patent and Trademark Office.

On June 13, 2001, a Response to Restriction Requirement was filed. The Response did not instruct the Office to change the address of record for the instant application.

A non-final Office action was mailed September 5, 2001. The Office action was sent to the address of record. Specifically, the Office action was mailed to Harness.

At the time the Office action was mailed, Harness was no longer responsible for the application and would have forwarded the Office action to Brinks. Harness states it would have entered the Office action into its docketing records if the Office action had been received prior to May 7, 2001. The Office action was mailed after May 7, 2001.

A request to change the address of record was filed on March 25, 2002.

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<sup>1</sup> The original petition cannot be located in the file. Therefore, this decision is based on the copy of the petition supplied on June 28, 2005.

A Notice of Abandonment was mailed May 15, 2002.

A petition to withdraw the holding of abandonment was filed on July 18, 2002. A decision dismissing the petition was mailed on August 21, 2002.

A renewed petition was filed on March 12, 2003.

Analysis:

If the Office action was received by Harness, even if it was never received by Brinks from Harness, the application was properly held to be abandoned.

The September 5, 2001 Office action could have been lost/misplaced at several times.

- (1) The Office action may have been lost during delivery to Harness by the USPS.
- (2) The Office action could have been lost after it was received by Harness and before it was forwarded to Brinks.
- (3) Brinks could have properly forwarded the Office action and the Office action could have been lost by the USPS during delivery to Brinks.
- (4) The Office action could have been received by Brinks and lost prior to being matched with the file or entered into the docketing system.

Petitioner bears the burden of proof. Petitioner has failed to demonstrate the probability of (1) above is *greater than* the combined probabilities of (2), (3), and (4).

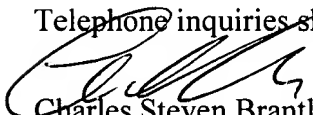
Petitioner may wish to consider filing a petition to revive under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$750 for a small entity, \$1,500 for a large entity), and the statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. A copy of a blank petition form is enclosed for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300  
Attn: Office of Petitions

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

  
Charles Steven Brantley  
Petitions Attorney  
Office of Petitions

Attached: Copies of papers mailed September 5, 2001  
Copy of petition under Rule 137(b) form